

## **REMARKS**

In response to the Office Action dated November 25, 2009, the Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 1-3 and 5-19 are pending in this application.

### **Rejection of Claims 3 & 13 under § 112**

The Office rejected claims 3 and 13 under 35 U.S.C. § 112, second paragraph, as being indefinite. These claims have been amended, so the Office is thus respectfully requested to re-examine these claims in their current presentation.

### **Rejection of Claims under § 102 (e)**

Claims 1-3, 5-8, and 10-19 were rejected under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent Application Publication 2002/0186827 to Griffiths.

*Griffiths*, however, cannot be cited against the pending claims. Documents that would qualify as “prior art” under 35 U.S.C. § 102 (e), 102 (f), or 102 (g) shall not preclude patentability when commonly owned at the time of invention, but, developed by another person. *See* 35 U.S.C. § 103 (c).

Here, *Griffiths* satisfies § 103 (c) and, thus, cannot be used to reject the pending claims. *Griffiths* is a co-pending patent application that was commonly assigned to the same assignee (namely, BellSouth Intellectual Property Corporation, now renamed AT&T Intellectual Property, I, L.P.). *Griffiths*’ effective filing date is June 12, 2001, and the pending claims have an effective filing date of September, 17 2002 (claiming priority to U.S. Application No. 10/245,170, filed September, 17 2002). *Griffiths* thus qualifies as a § 102 (e) document, which is precluded by § 103 (c).

The Assignee, then, respectfully asserts that *Griffiths* cannot be cited against the pending claims. The Office is thus respectfully requested to remove the § 102 (c) rejection of claims 1-3, 5-8, and 10-19.

**Rejection of Claim 9 under § 103 (a)**

Claim 9 was rejected under 35 U.S.C. § 103 (a) as being obvious over *Griffiths* in view of U.S. Patent Application Publication 2003/0050100 to Dent. As the above paragraphs explained, though, *Griffiths* is precluded by § 103 (c). *Griffiths* cannot be cited against the pending claims. The Office is thus respectfully requested to remove the § 103 (a) rejection of claim 9.

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If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Scott P. Zimmerman', with a stylized, overlapping loop structure.

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